



## Chesterfield County, Virginia

### Memorandum

**DATE:** SEPTEMBER 8, 2003

**TO:** CHESTERFIELD COUNTY PLANNING COMMISSION

**FROM:** THOMAS E. JACOBSON, DIRECTOR OF PLANNING *Tom*

**SUBJECT:** ZONING ORDINANCE AMENDMENT RELATIVE TO CIVIL PENALTIES

#### RECOMMENDATION:

Staff recommends the Planning Commission schedule a public hearing to consider the zoning ordinance amendment shown in Attachment A.

#### BACKGROUND:

The Board of Supervisors has directed the Planning Commission to consider a change in the Code of Virginia relative to civil penalties for zoning violations and to determine if a zoning ordinance amendment is needed. No action is mandated by this legislative change.

Section 15.2-2209 of the Code of Virginia has been amended to allow an increase in fines for violations of the zoning ordinance governed by civil penalties (a copy of 15.2-2209 is attached as Attachment B). A comparison between the current zoning ordinance fines and the new state maximum fines is listed below:

CIVIL PENALTY COMPARISON		
Item	Zoning ordinance	State maximum
Initial summons (violation)	\$100	\$100
Additional summons (subsequent violations)	\$150	\$250
Cumulative total	\$3000	\$5000

Most zoning violations are governed by criminal penalties. Only certain businesses from the home and violations of hours of operation and noise standards are governed by civil penalties.

The attached zoning ordinance amendment will bring the fines for civil penalties in the zoning ordinance in line with the recent changes in the Code of Virginia.

2 enclosures

AN ORDINANCE TO AMEND THE CODE OF THE COUNTY  
OF CHESTERFIELD, 1997, AS AMENDED, BY AMENDING  
AND RE-ENACTING SECTION 19-6 RELATING TO CIVIL PENALTIES  
AND PROVIDING FOR A PENALTY

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

*(1) That Section 19-6 of the Code of the County of Chesterfield, 1997, as amended, is amended and re-enacted to read as follows:*

**Sec. 19-6. Civil penalties for certain violations.**

(a) Any violation of the following provisions shall be punishable by a civil penalty of not more than \$100.00 for the initial summons and not more than ~~\$150.00~~ 250.00 for each additional summons:

- (1) Operation of a business that is not a home occupation, on a lot or parcel inside or outside of a dwelling unit or accessory building, in any R, R-TH, R-MF or A district, without a special exception or conditional use.
- (2) Violation of any condition of zoning and development approvals and substantial accord approvals for which a public hearing does not occur that relates to the hours of operation of the use of land or that relates to reduction or control of noise from the use of land.

(b) Each day during which any violation of subsection (a) exists shall constitute a separate violation. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any ten-day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties which exceed a total of ~~\$3,000.00~~ 5,000.00.

(c) The designation of a particular violation of this section as an infraction pursuant to subsection (a) shall be in lieu of criminal sanctions, and except for any violation resulting in injury to any person or persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.

(d) The director of planning shall cause one copy of a summons to be personally served upon persons violating the provisions of subsection (a).

(e) Such summons shall contain the following information:

- (1) The name and address of the person charged.
- (2) The nature of the infraction and the ordinance provision(s) being violated.

- (3) The location, date and time that the infraction occurred or was observed.
- (4) The amount of the civil penalty assessed for the infraction.
- (5) The manner, location and time in which the civil penalty may be paid to the county.
- (6) The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.

(f) The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the county treasurer at least 72 hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court. However, an admission shall not be deemed a criminal conviction for any purpose.

(g) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law or equity and it shall be the county's burden to prove the violator's liability by a preponderance of the evidence. A finding of liability shall not be deemed a criminal conviction for any purpose.

(h) The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law or equity.

(2) *That this ordinance shall become effective immediately upon adoption.*

1923:62858.1

CHAPTER 192

*An Act to amend and reenact § 15.2-2209 of the Code of Virginia, relating to civil penalties for zoning violations.*

[H 1888]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2209 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2209. Civil penalties for violations of zoning ordinance.

Notwithstanding provision 5 of § 15.2-2286, any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under provision 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not more than ~~\$150~~-\$250 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any ~~ten~~ 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of ~~\$3,000~~ \$5,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor. The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a

preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way.